

## **REMARKS**

Reconsideration of the first Office action issued in connection with the above-identified patent application is requested in view of the foregoing amendments and the following remarks. Prior to entry of the above amendments, claims 1-24 were pending, with claims 1, 11-15, 20-21 and 23-24 rejected and claims 2-10, 16-19, and 22 indicated to be allowable if rewritten in independent form. Upon entry of this response, the specification and claims 2, 12, 16, and 22-23 are amended, claims 1, 11, and 20-21 are cancelled without prejudice, and new claims 25-28 are added.

Beginning initially with the specification, the Examiner accurately identified several informalities with the original specification, including several typographical errors and several areas where the drawings and specification did not correspond. By the above amendments to the specification, Applicants submit that each of these informalities has been corrected. Applicants thank the Examiner for his time and attention to detail identifying these issues.

Turning now to the claims, original claims 1, 11-15, 20-21 and 23-24 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,754,966 to Holzer. Applicants have studied the cited reference in view of the original claims and respectfully traverse the rejections because Holzer fails to disclose or suggest the marshmallow toasting utensils or the methods recited in the rejected claims. However, Applicants appreciate that many of the original claims have already been indicated to be allowable. Accordingly, the focus of this response will largely be to present the claims that have already been indicated to contain allowable subject matter in condition for formal allowance. Accordingly, original claims 1, 11, 20 and 21 have been

cancelled without prejudice. Applicants reserve the right and their intent to resume prosecution of the other original claims in a related application.

In the claims, original claims 2-10, 16-19 and 22 were indicated to contain allowable subject matter and to be allowable if rewritten in independent form. By the above amendments, claims 2, 16, and 22 have been rewritten independent form. Accordingly, Applicants submit that claims 2 and 16 are in condition for formal allowance. Claims 3-10 depend from amended claim 2 and therefore should be allowed when amended claim 2 is allowed. Claims 12-15 and 17-19 depend from amended claim 16 and therefore should be allowed when claim 16 is allowed.

Original claims 23-24 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,754,966 to Holzer. Applicants have studied the cited reference and respectfully traverse the rejections of the claims. By the above amendments, claim 23 has been rewritten in independent form. Claim 23 recites a method for toasting a marshmallow, with the method including using a utensil having a handle into which at the least the end regions of a plurality of wire segments are positioned when the utensil is in its stowed configuration. The plurality of wire segments form a wire assembly, and the recited method includes configuring the wire assembly to an extended configuration in which the wire segments extend away from the handle with the end regions of the wire segments positioned distal the handle. As recited in claim 23, this configuring step includes sliding the wire assembly from within the handle to the extended configuration. The method further includes impaling a marshmallow upon the end regions after deforming the end regions toward each other, and heating the

marshmallow, with the end regions spreading apart from each other as the marshmallow is heated.

Applicants submit that original claim 23 patentably distinguishes Holzer, not only because Holzer fails to disclose or suggest a method for toasting marshmallows in which the elastically deformable end regions of wire segments upon which the marshmallow is impaled spread apart from each other as the marshmallow is heated, but also because Holzer's tool includes only pivotal tines that are at all times positioned external the handle of the tool. As perhaps best seen in Fig. 4 of Holzer, the prongs 11 are pivotal relative to the head 13 of the tool and at all times are external to the handle of the tool. Holzer fails to disclose any slidable movement of the tines to configure the tines between extended and retracted configurations. Perhaps more importantly, Holzer relies upon pivotal movement of the tines and therefore teaches away from the recited sliding movement of the tines, much less sliding movement that includes sliding the tines from a stowed position in which the ends of the tines extend within the handle of the tool to an extended position in which the ends extend away from the handle of the tool. For at least the above reasons, Applicants requests reconsideration of the rejection of claim 23. Claim 24 depends from claim 23 and therefore should be allowable when claim 23 is allowed.

In view of the above, Applicants submit that all of the issues raised in the first Office action have been addressed. If there are any remaining issues or if the Examiner has any questions, Applicants' undersigned attorney may be reached at the number listed below. Similarly, if the Examiner believes that a telephone interview may

be productive in advancing prosecution of the present application, the Examiner is invited to contact Applicants' undersigned attorney at the number listed below.

Respectfully submitted,

KOLISCH HARTWELL, P.C.

A handwritten signature in black ink, appearing to read 'David S. D'Ascenzo', is written over a horizontal line.

David S. D'Ascenzo  
Registration No. 39,952  
PTO Customer No. 23581  
Kolisch Hartwell, P.C.  
520 S.W. Yamhill Street, Suite 200  
Portland, Oregon 97204  
Telephone: (503) 224-6655  
Facsimile: (503) 295-6679